IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 121 OF 2004

J.I. Biradar Patil .... Petitioner

versus

The State of Maharashtra & ors. ... Respondents.

Shri A.R. Pitale for the petitioner.
Shri P.M. Patil AGP for Respdts. 1 to 4.

CORAM; V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATED; 6TH JUNE, 2006.

P.C:

1. By this petition, the petitioner is challenging the order passed by the Maharashtra Administrative Tribunal on 1-12-2003 rejecting his Original Application.

2. That order in Original Application dated 17-9-2002 passed by Respondent no.4 was challenged. Because by that order the petitioner was denied upgradation to the post of sectional engineer with effect from 1-4-1984. The petitioner was denied that upgradation because he did not complete the required five years continuous service in that cadre till that date.

3. The petitioner was appointed as Junior engineer on

31-1-1979 and thereafter was placed under suspension for being charged with offences under sections 406, 380, 381, 201 read with 34 of IPC. He remained on suspension till 25-9-1989 when the competent criminal court acquitted the petitioner of all the charges. On the basis of this acquittal, the departmental proceedings were continued and the punishment of stoppage of one increment for one year without effecting on future increments was imposed by the department and the applicant was re-instated in service from 9-11-1999.

4. The competent authority by order dated 4th March 1991 held that the period of suspension of the applicant from 24-7-1980 to 15-11-1990 should be treated as a period on duty only for the purposes of pension. This order was never challenged by the petitioner and has therefore acquired finality. That being so, the reasoning given by the respondent no.4 in his order dated 7-9-2002 denying the petitioner the upgradation effected from 1-4-1984 cannot be questioned. The petitioner factually did not complete the requirement of the rules as because of suspension, he was not continuously in service for a period of five years before the upgradation can be granted to the petitioner.

5. The learned counsel for the petitioner sought to contend that the cause of action to challenge the order dated 4-3-1991 arose only on 17-9-2002 when the upgradation was denied to the petitioner. Even if this contention is accepted the petitioner ought to have challenged the order of 4-2-2991 in the Original Application in which the impugned order was passed. Having failed to do that the petitioner cannot now claim the amendment of the Original Application and the petition so as to enable him to challege the order of 4-1-1991. In that circumstances, no fault can be found in the order of Tribunal, which requires any interference. Petition accordingly rejected.